

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

MICHAEL BOHANNAN, #1841746,

Plaintiff,

v.

ERICA REDIC, et al.,

Defendants.

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Case No. 6:20-cv-293-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

This action was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. On September 18, 2020, the Magistrate Judge issued a Report and Recommendation recommending that the action be dismissed without prejudice for want of prosecution and failure to obey a Court order. Docket No. 22.

On October 15, 2020, Plaintiff filed objections to the Report asserting that he did not receive notice that the lawsuit had been referred to the Magistrate Judge and that he had filed an affidavit to proceed *in forma pauperis* and a certified *in forma pauperis* data sheet. Docket No. 27.

This Court reviews the objected-to findings and conclusions of the Magistrate Judge de novo. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc),


*superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

In his objections, Plaintiff argues that he did not receive adequate notice that this case was referred to the Magistrate Judge, resulting in a due process violation. Docket No. 27 at 1–2. Plaintiff does not possess a due process right on this issue. A district judge may refer pre-trial and preliminary matters to a magistrate judge to issue a Report and Recommendation or pretrial order, for which no consent is required. *See Newsome v. E.E.O.C.*, 301 F.3d 227, 230 (5th Cir. 2002). Plaintiff's objection is overruled.

Plaintiff next objects by asserting that he has submitted a proper affidavit to proceed *in forma pauperis* and a certified *in forma pauperis* data sheet(s). Docket No. 27 at 2–5. On these, the Court notes the Orders of Deficiency issued by the Magistrate Judge. Docket Nos. 9 and 15. The Court also relies on its analyses and determinations in previous orders regarding Plaintiff's meritless assertion that he has complied with the Deficiency Orders. Dockets Nos. 19, 26, and 29. The Court notes that Plaintiff's resistance to follow procedure in this case satisfies two of the three aggravating factors discussed in *Love v. Bendily*, specifically: (1) delay caused by the plaintiff himself, and (2) delay caused by intentional conduct. 567 F. App'x 250, 251–52 (5th Cir. 2014) (citing *Berry v. CIGNA/RSI-CIGNA*, 975 F.2d 118, 1191 (5th Cir. 1992)). Plaintiff was notified about the deficiencies in his *in forma pauperis* application in June 2020, but has refused to cure those deficiencies. Plaintiff's objection is overruled.

Having reviewed Plaintiff's objections de novo, the Court concludes that the objections are without merit and that the findings and conclusions of the Magistrate Judge are correct. Accordingly, the Court hereby **ADOPTS** the Magistrate Judge's Report (Docket No. 27) and **DISMISSES** Plaintiff's claims **WITHOUT PREJUDICE** for want of prosecution and failure to obey a Court order.

So **ORDERED** and **SIGNED** this **24th** day of **November, 2020**.

  
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JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE